

DELIVERED ON MARCH 9<sup>TH</sup>- STILL NOT POSTED ON 3/16/2022. COPIES PROVED TO SEC, WHITE, ESQ. AND EISEMANN, ESQ.

I reminded the pro Se intake office on Friday that it has not been posted. It is being resent today 3/16/2022.

**Reference: 98-cv-2636 (LAP)**

March 6, 2022

Honorable Judge L.A. Preska

United States District Court for

Southern District of New York

500 Pearl Street

New York City, New York 10007



Reference: Clarification on my poor attempt to explain what I observed to be a strict statutory limitation against the S.E.C. bringing an action against Phyllis Gottlieb in 2015 based upon a 2003 judgment for violations which occurred in 1992-3 as they appear to be barred.

Hon. Judge L. A, Preska,

Based upon the below Notice I respectfully request a dismissal of the transferred Florida action against Phyllis Gottlieb and the release of her \$817,000 wrongly restrained Florida Homestead Proceeds including the \$56,428 improperly paid to Alexander Eisemann, Esq. over her objections.

**PLEASE TAKE NOTICE:**

1. Allen Gottlieb brings the following information concerning penalties and the statute of limitations to the Court and to the Commission's attention while

keeping in mind that the Judgment it holds against Allen Gottlieb is not against Phyllis Gottlieb:

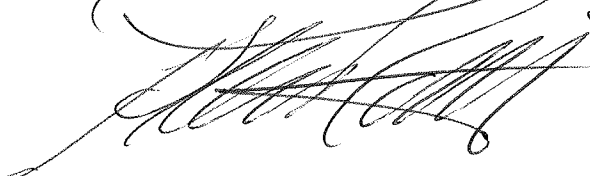
2. It appears that there are no statutory basis to attack Phyllis Gottlieb in 2015 concerning the sale of her Homestead Residence in Aventura, Florida and likewise there is no statutory basis to attack Phyllis Gottlieb in Nassau, Bahamas concerning the sale of her real estate in 2019 based upon the 2003 Judgment the Commission holds against Allen Gottlieb for violations occurring in 1992-3 which appear to be well beyond any authority or permissible statutory limits as three-decades have passed.
3. Additionally, without providing significant evidence to substantiate the wild claim of "alter ego" the attach cannot be justified as it lacks any reasonable basis or burden of proof.
4. In addition, all gains Allen Gottlieb received were already disgorged in 1995 when Allen received a court approved settlement and dismissal signed by Hon. Judge L.A. Preska confirming all gains were previously disgorged and therefore, it would be impossible to disgorge them a second time.
5. In June 2017, the Supreme Court held in *Kokesh* that SEC disgorgement is a penalty and, therefore, subject to the **five-year statute of limitations** in 28 U.S.C. § 2462.
6. As an aside, I would like to remind the Commission that when Allen Gottlieb was served in Nassau, Bahamas that service was 22 months after the statute of limitations already honestly expired.
7. In June 2020, the Court held in *Liu* that disgorgement may be considered equitable relief permissible under Section 21(d)(5) of the Exchange Act but only after deducting legitimate expenses incurred by the defendant and **only if** the disgorgement is awarded for the benefit of the victims. The record in case 98-cv-

2636 (LAP) lacks any evidence to substantiate that the parties involved lost \$3 Million dollars. The record does confirm that Longo was already reimbursed as Allen Gottlieb returned the legal fees, he earned in 1995 and the other defendants never claimed they even met, spoke to, communicated with, or retained or paid anything to Allen Gottlieb. +

8. On January 1, Congress affirmed the authority of the Securities and Exchange Commission (SEC) to obtain disgorgement for violations of the federal securities laws under the National Defense Authorization Act for Fiscal Year 2021 (NDAA).
9. Among other changes to the securities laws, the NDAA amends the Securities Exchange Act of 1934 to codify the SEC's authority to seek disgorgement from persons who receive unjust enrichment. It also extends to ten years the statute of limitations applicable to disgorgement claims arising from violations of the anti-fraud provisions of the securities laws, including Section 10(b) of the Exchange Act and Section 17(a)(1) of the Securities Act of 1933. But while the new legislation formalizes certain aspects of the SEC's disgorgement authority, it freezes, and in some cases scales back, the SEC's ability to seek other remedies.
10. Most obviously, the new legislation does not affect the statute of limitations applicable to civil monetary penalties, which the Supreme Court determined in its 2013 decision in *Gabelli v. Securities and Exchange Commission* to be five years from the date of the underlying violation, which occurred in 1992-3. Based upon these decisions and the statutes in play it appears that the Commission has exceeded it's statutory authority and any actions against Phyllis Gottlieb must be dismissed.

Respectfully RESUBMITTED this (6<sup>th</sup>)

Day 16<sup>TH</sup> of March 2022,



Allen Gottlieb, Pro Se

4866 Riverchase Drive., Troy Michigan 49098, [Lawconsultancy@aol.com](mailto:Lawconsultancy@aol.com), 786-557-3717

**CERTIFICATE OF SERVICE**

Allen Bruce Gottlieb hereby certifies under penalty of perjury that he has US Mailed a copy of this letter and request to dismiss the case against Phyllis Gottlieb to the Pro Se Intake Unit, U.S. District Court for the Southern District of New York, and to Ms. Christy White, Esq, SEC, 100 F. Street, Washington, D.C. 20549 and to Mr. Alexander Eisemann, Esq., 20 Vesey Street, Suite 400, NYC, NY 10007.

Dated: Michigan, 3.6.2020

**RESUBMITTED 3.16.2022**



Allen Gottlieb



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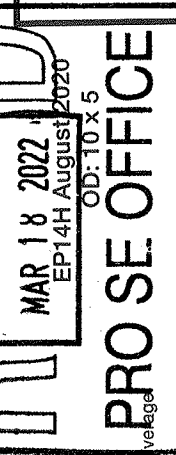
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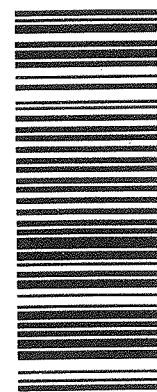
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